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THE HONORABLE THOMAS RICE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

LAWRENCE DARREN MOLDER,

Plaintiff,

v.

BNSF RAILWAY COMPANY,

Defendant.

No. 2:18-cv-00257-TOR

**DEFENDANT BNSF'S  
[PROPOSED] FRSA VERDICT  
FORM**

## FRSA VERDICT FORM

**QUESTION 1:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that he engaged in protected activity by reporting an on-the-job injury, in good faith, to a BNSF manager in 2009?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is “Yes,” continue to Question 2. If your answer is “No,” skip Questions 2, 3, and 4, and continue to Question 5.*

**QUESTION 2:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that the decision-makers in his dismissal, David Thornton and Brian Clunn, knew at the time they made their dismissal decisions that Plaintiff had report an on the job injury in 2009 when Plaintiff was dismissed?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is “Yes,” continue to Question 3. If your answer is “No,” skip Questions 3 and 4, and continue to Question 5.*

**QUESTION 3:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that Plaintiff's reporting a work-related injury in 2009 was a contributing factor in the dismissal decision?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is "Yes," continue to Question 4. If your answer is "No," skip Question 4, and continue to Question 5.*

**QUESTION 4:** Has BNSF proven by clear and convincing evidence that it would have dismissed the Plaintiff even if he had never reported an on-the-job injury in 2009?

**ANSWER:** (Yes or No)\_\_\_\_\_

*Continue to Question No. 5.*

**QUESTION 5:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that he engaged in protected activity by reporting an on-the-job injury, in good faith, to a BNSF manager in 2017?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is "Yes," continue to Question 6. If your answer is "No," continue to Question 9 ONLY IF you answered "No" to Question 4. If you did not answer Question 4 (because your answer was "No" to Questions 1, 2, or 3), or if your*

*answer to Question 4 was “Yes,” then sign this verdict form and return it to the Bailiff.*

**QUESTION 6:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that the decision-makers in his dismissal, David Thornton and Brian Clunn, knew at the time they made their dismissal decisions that Plaintiff had reported an on-the-job injury in February 2017?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is “Yes,” continue to Question 7. If your answer is “No,” continue to Question 9 ONLY IF you answered “No” to Question 4. If you did not answer Question 4 (because your answer was “No” to Questions 1, 2, or 3), or if your answer to Question 4 was “Yes,” then sign this verdict form and return it to the Bailiff.*

**QUESTION 7:** Did Plaintiff, Darren Molder, prove by a preponderance of the evidence that Plaintiff’s report in February 2017 of an on-the-job injury was a contributing factor in the dismissal decision?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is “Yes,” continue to Question 8. If your answer is “No,” continue to Question 9 ONLY IF you answered “No” to Question 4. If you did not answer Question 4 (because your answer was “No” to Questions 1, 2, or 3), or if your answer to Question 4 was “Yes,” then sign this verdict form and return it to the Bailiff.*

**QUESTION 8:** Has BNSF proven by clear and convincing evidence that it would have dismissed the Plaintiff even if he had never reported an on the job injury in 2017?

**ANSWER:** (Yes or No)\_\_\_\_\_

*If your answer is "No," continue to Question 9. If your answer is "Yes," continue to Question 9 ONLY IF you answered "No" to Question 4. If you answered "No" to Question 8 and did not answer Question 4 (because your answer was "No" to Questions 1, 2, or 3) or if your answer to Question 4 was "Yes," then sign this verdict form and return it to the Bailiff.*

**QUESTION 9:** What amount of damages do you find from the preponderance of the evidence would adequately compensate the Plaintiff for emotional distress, if any, from the actions you found in response to Questions 3 and/or 7? Your answer may not exceed \$150,000. You may not award damages for any other reason.

**ANSWER:** \_\_\_\_\_

The foregoing is the unanimous verdict of the jury.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
PRESIDING JUROR \_\_\_\_\_